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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,224

01/26/2004

Byoung-Woo Cho

1781.1001

6552

21171 7590 02/14/2007  
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EXAMINER

HANEY, RICHAE LEE

ART UNIT

PAPER NUMBER

3765

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/763,224

Applicant(s)

CHO, BYOUNG-WOO

Examiner

Richale L. Haney

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-11 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

***Response to Amendment***

The amendment filed on 11/08/2006 has been considered. Claim 1 was amended. Claim 15 was added. Claims 3 and 12 –14 were cancelled. Claims 1, 2, 5 – 11, and 15 are currently pending.

***Claim Rejections - 35 USC § 112***

1. Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant recites the negative limitation “the head receiving portion does not comprise the shape tape.” This limitation was not disclosed in the originally filed specification and therefore is new matter. Further, this recitation is contradictory to that shown and disclosed in the specification. For example on pg. 9, lines 6 – 10 recites the relationship of the shape or bias (214) tape to the crown gores (212). Claim 1 also recites the shape tape attached to the head-receiving portion.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 5 –9, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs (US 6,290,644) in view of applicant's specification. The device of Higgs discloses a cap made from woven, stretchable fabric with twisted yarns and a knit sweatband (12) comprising stretchable, twisted yarns, partially covering the foam core (22) attached to the lower peripheral edge (Figure 4, 4) at the inside of the head receiving portion (Figure 2) wherein the crown formed from a plurality of stretchable gores (3, 4, 5, 6, 7, 8). It is noted that all natural yarns (i.e. cotton) are inherently spun/twisted and therefore both the weft and warp yarns are formed from high twist yarns. A shape tape (17) is attached to the head receiving portion and a sweatband (12) along a lower edge of the crown, wherein the sweatband (12), the shape tape (17) and the crown are wholly pressed and stitched together with a stretchable yarn (Column 45 – 56), along a lower edge of the crown (See Figure 7, clearly shows the thread extending through the crown, the shape tape, and the sweatband). Moreover, according to Steve Warner's text "Fiber Science" Hooke's Law teaches that all materials have the ability to stretch and recover (page 136 –138). Both the sweatband and the crown receive the head of the wearer and are interpreted to be head receiving portions. The sweatband (12) comprises an outer stretchable cotton terry toweling is covering (Column 6, lines 29 – 31) a band of elastic material (13). The device of Higgs is lacking a yarn that is twisted more than 800 times per meter. Applicant's specification of 1/26/2004 states in the background of the invention that "high twist yarns that are twisted about 1,000 – 3,000 times are widely used for commercial purposes." Applicant

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has not provided evidence or disclosure of unexpected results derived from the use of a high twist yarn, twisted over 800 times per meter. The specification teaches that yarn twisted about 1,000 – 3,000 times is widely used and results in stretchable yarn. The general conditions of the claims are disclosed in the admitted prior art. Thus, the 800 value could have been arrived through routine experimentation.

The device of Higgs is silent to the number of times the yarn is twisted, but it would have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize a yarn twisted more than 800 times per meter in view of applicant's admission of prior art.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs as applied to claims 1, 2, 5 –9, and 15 above, and further in view of Nebeker (5,566,395). The modified device of Higgs substantially discloses all of the claimed invention but is lacking the particular type of foam core. Nebeker teaches a urethane foam used as the core for a sweatband (Column 1, lines 54- 56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Higgs by using a polyurethane (a type of urethane) foam as taught by Nebeker in order to draw moisture away from the hat (Column 2, lines 23 –24).

### ***Response to Arguments***

5. Applicant's arguments filed 5/24/2006 have been fully considered but are moot in view of new grounds of rejection.

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6. Applicant argues that element 17 is not within the definition of a tape since it is not a narrow strip 17 but instead is a portion of a structure. Applicant's specification states, "a bias tape is provided over the inseam between two adjacent gores on the inner side of the crown. Also, the bias tape helps prevent the gores from being deformed." The shape tape 17 is a narrow strip that is folded to be over the inseam between two adjacent gores and helps to prevent the gores from being deformed. The applicant's claim and disclosure do not limit the narrow strip, or shape tape, from being a portion of the structure. The prior art meets the limitations as claimed by the applicant.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L Haney  
Examiner  
Art Unit 3765

RLH  
2/2/2007



**KATHERINE MORAN**  
**PRIMARY EXAMINER**